IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 9722 OF 2004

Mr. E.H. Harrison & Ors. ... Petitioner

Vs.

Ceat Employees Coop. Credit
Soc. Ltd. and Ors. ... Respondents

Mr. P.V. Sawant for Petitioner.

Mr. S.P. Thorat for Respondent No. 1.

Mr.Pradip Sailtly with Mr. O.A. Dubey for
Respondent No. 13.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 25, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioners along with others as members of the Managing Committee on the occasion of silver jubilee of Respondent No. 1 distributed gift articles and also spent money for silver jubilee celebrations. On their term of office coming to an end, the new coming committee felt that the function had not been conducted with the consent of the general body and accordingly sought to recover amount from the Managing Committee members who had held the function. That the function was held is not disputed.

. The second contention is that the gifts were

given to the members. This is also not disputed. All members including the members of the new managing committee had received the said gifts. The contention is that the purchase by the erstwhile Managing Committee members was at the rate of Rs.412/- per set whereas the new Managing Committee they had called for quotation for sample of the same articles and they were given quotation of Rs.258/- per set of articles. The articles were purchased in the year 1994 and the quotation for sample was invited in the year 1999.

. The grievance of the petitioner herein is that firstly the celebrations were held pursuant to the decision by the General body and in these circumstances, it was not open to direct recovery against them. It is also submitted that in the celebrations there was participation by all members and even if there be some irregularity, there can be no order of recovery of amount as there was no illegality. In so far as challenge to the order of recovery towards gifts, it is submitted that it was only at the stage that the quotation for the articles at the rate of Rs.258/- was produced. They had no opportunity of meeting that contention. It is pointed out that the fact that four years had elapsed had not been taken into consideration nor the fact of quality or nature of the goods. The learned authority proceeded on the footing that the

price would be Rs.258/- per set of articles as per the quotation and considering the difference has directed that the difference between Rs.412/- and Rs.258/- be recovered from the erstwhile Managing Committee. Had these aspects been taken into consideration and opportunity had been given to the petitioners to meet the documentary evidence produced by the new managing committee, they could have explained their stand. There has been thus denial of natural justice and or fair play. From the impugned order also it is seen that the amounts sought to be recovered with interest at the rate of 18%. This was not a loan taken by the members from the society. Considering that this was not a commercial transaction, interest of 18% could not have been granted. At the highest, if it is held that the amounts are due, interest could have been granted on the basis of the interest on the fixed deposits by Banks. Considering that, the following order :

. The impugned order dated 16.9.2004, passed by Joint Secretary, Cooperative Authority is set aside. The matter is remanded back to the Appellate authority, after giving opportunity to the petitioners herein to meet the evidence led by the Respondent to rehear the appeal and dispose of the same on merits considering what is set out in the body of the judgement. Considering the matter

is old matter, the appellate authority is directed to dispose of the appeal as expeditiously as possible. Rule made absolute accordingly. No order as to costs.

. Considering that the order is set aside, Respondent No. 5 is directed not to make any further deductions. Deductions, if any; will be subject to the final order tobe passed by the Appellate Authority. It is further made clear that even in the matter of recovery of moneys, provisions of order 21 of C.P.C. have to be borne in mind.

(F.I. REBELLO,J.)